

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

LACKMANN CULINARY SERVICES
Employer

and

Case No. 29-RC-11582

**LOCAL 1102, RETAIL, WHOLESALE &
DEPARTMENT STORE UNION, UNITED
FOOD AND COMMERCIAL WORKERS**
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, Lackmann Culinary Services, herein the Employer, and Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers, herein the Petitioner, entered into a stipulation of facts in connection with the above-captioned proceeding and a waiver of the right to a hearing and the submission of briefs¹. That stipulation was received and, based thereon, makes the following.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The parties stipulated that the Employer, a domestic corporation, with its principal office and place of business located at 303 Crossways Park Drive,

¹ In the stipulation the parties also waived their right to request review of this Decision and Direction of Election.

Woodbury, New York, has been engaged in the business of providing food services to facilities and organizations throughout New York, among them the California Deli and the Dutch Treats facilities at Hofstra University, Hempstead, New York, herein called the Hempstead facility. During the past twelve month period, which period is representative of its annual operations in general, the Employer purchased and received, at its Hempstead facility, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York.

Based on the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated that the Petitioner, is an organization in which employees participate, and which exists, in whole or in part, for the purpose of dealing with employers concerning wages, hours and other terms and conditions of employment.

Based on the stipulation of the parties, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Based on the stipulation of the parties I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

All full-time and regular part time food service employees and cashiers employed by the Employer at California Deli and Dutch

Treats, both located at Hofstra University, in Hempstead, New York, excluding office clerical workers, guards, and supervisors as defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the

election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **April 30, 2008**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by

facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

Dated: April 23, 2008.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201